then if the letter is not returned, it is assumed to have been delivered in the ordinary course of post and any judgment or order by default on the faith of that assumption is perfectly regular. It will not be set aside except on payment of costs and showing of merits: see *T. O. Supplies (London) Ltd.* v. *Jerry Creighton Ltd.*(2) But if the letter is returned undelivered and nevertheless, notwithstanding its return, a judgment or order by default is obtained, it is irregular and will be set aside *ex debito justitiae*."

The important words are "when service of process is allowed by registered post without more being said on the matter" which was the case in *ex parte Rossi, supra,* and which distinguishes it from the present one.

In the case before me more was said namely that where service is made by registered post the time at which the document so posted would be delivered in the ordinary course of post shall be considered as the time of service thereof.

This additional factor coupled with the palpable and deliberate omission of the words "unless the contrary is proved" make it clear, in my opinion, that the summons was sufficiently served within the meaning of the rule.

In *R.* v. *Westminster Union Assessment Committee, ex parte James Woodward & Sons* (3) a similar question arose in connection with the service of a notice increasing the rateable value of land. By section 65 of the Valuation (Metropolis) Act, 1869 notices may be served by post by prepaid letter addressed to the occupier, and, if sent by post shall be deemed to have been served and received at the time when the letter containing the same would be delivered in the ordinary course, and in proving such service or sending it shall be sufficient to prove that the letter containing the notice was properly addressed and prepaid and put in the post. The occupier proved that he had not in fact received the notice. The court (Viscount Reading C.J., Ridley and Lush JJ.) held that the effect of the section was that when the posting of a prepaid notice properly addressed was proved the addressee must be taken to have received it.

It is true that in that case the words "and received" occur in the section but I do not consider that the addition of those words carries the matter any further but were merely inserted *ex abundanti cautela.*

In the result therefore I have come to the conclusion that the judgment was regularly and properly obtained and the writ of seizure and sale lawfully issued in pursuance of the judgment.

That is sufficient to dispose of the plaintiff's case in trespass but it appeared from his statement of claim that he was alleging a malicious abuse of civil proceedings.

In civil proceedings under certain circumstances, namely, those which involve an interference with liberty or property, or affect, or are likely to affect, reputation an action undoubtedly lies if those proceedings are undertaken maliciously and without reasonable and probable cause.

All that I need say on this aspect of the case is that the plaintiff has failed to discharge the onus of proof which lies upon him of proving malice and that the defendant acted without reasonable and probable cause nor can these matters be inferred from the surrounding circumstances.

In the light of my findings it is unnecessary to consider the question of damages except to say that the plaintiff's evidence on the subject was highly unsatisfactory to say the least of it and here again he has, in my view, failed to discharge the onus which lies upon him of proving them.

The plaintiff's claim therefore fails on all grounds and must be dismissed with costs and judgment entered for the defendant accordingly.

Judgment for the defendant.

Solicitors: *M. N. Samy; Braddell Bros.*

LING NAM RUBBER WORKS v. LEONG BEE & CO. (NO. 2)

[F.C. (Ong Hock Thye F.J., Raja Azlan Shah and Pawan Ahmad JJ.) March 14, 1968]

[K.L. — Civil Appeal No. X. 76 of 1966]

Practice and Procedure — Judgment — Reversal of — Repayment of amount of judgment — interest on.

Practice and Procedure — Judgment — Alteration of, before being entered — Slip rule — R.S.C. 1957, O. 28 r. 11.

In an action claiming damages for negligence by fire, the High Court at Johore Bahru awarded $87,135.82 to the respondents. The judgment was satisfied in full. On appeal, the judgment was reversed by the Federal Court ([1968] 1 M.L.J. 216). The respondents were ordered to repay the amount of the judgment. There was no express direction for the payment of interest on the sum. Before the order was passed and entered the appellants made an application for its amendment by the addition that interest be allowed on the amount to be repaid.

Held, granting the application: (1) an order pronounced by a judge can always be altered until such time as it has been drawn up, passed and entered, and when a judge has pronounced judgment he retains control over the case until the order giving effect to his judgment is formally completed;

(2) interest should be allowed on the amount to be repaid on the principle that "to refuse it would be tantamount to condoning and approving the unjust enrichment of the respondents to the extent that they had the use and benefit of moneys to which the appellants were justly entitled".

Cases referred to:—

(1) *In re Harrison's Share Under a Settlement* [1955] 1 Ch. 260.

(2) *In re Inchcape (Earl of); Craigmyle* v. *Inchcape* [1942] 1 Ch. 394.

(3) *Rodger* v. *The Comptoir d'Escompte de Paris* (1871), L.R. 3 P.C. 465 at p. 475.

FEDERAL COURT.

Peter Mooney for the appellants.

D. L. Pickard for the respondents.

Ong Hock Thye F.J.: The question arising herein is whether this court, upon setting aside a judgment under which moneys were paid in execution, should order restitution to be made with or without interest for the period that they were in the wrong hands. This point has been raised as the sequel to the judgment of this court pronounced on January 26, 1968.

In an action claiming damages for negligence by fire, the respondents were awarded by the High Court at Johore Bharu on October 1, 1966 compensation in the sum of $87,135.82. Notwithstanding entry of notice of appeal, the respondents insisted on execution and on November 4, 1966 received payment in full of the sum awarded. The judgment was set aside by us on appeal, whereupon restitution was ordered when counsel for the appellants informed the court that the moneys had already been paid. Unfortunately, however, counsel had forgotten to ask then and there for interest as well, so that the order was tacit with regard thereto. In the result an application was made, before the order was passed and entered, for an amendment by addition of the following paragraph:—

"*And it is ordered* that the respondents do pay to the appellants interest at the rate of *six per centum per annum* on the said damages and interest paid by the appellants to the respondents from the 4th November 1966 until the date on which the said damages and interest are repaid to the appellants by the respondents."

As regards the application itself, it is now settled law "that an order pronounced by the judge can always be withdrawn, or altered, or modified by him until it is drawn up, passed and entered" and that "when a judge has pronounced judgment he retains control over the case until the order giving effect to his judgment is formally completed". See the judgment of Jenkins L.J. in *In re Harrison's Share Under a Settlement.*[1]

On the application of the slip rule, Order 28 rule 11, it is equally clear that the same principle applies, be the omission a slip on the part of counsel, on the part of a solicitor, or on the part of a party to the action. An error arising in an order due to accidental omission is to be distinguished from other cases where,, to quote Morton J., "if a judge's attention is directed to a particular point, and, applying his mind to that point, he decides it, there can be no alteration under this rule, even if the judge has fallen into manifest error." See *In re Inchcape (Earl of), Craigmyle* v. *Inchcape.*[2]

In the instant case, which is still fresh in our recollection, my brethren and I should have allowed interest, had it been asked for at the time judgment was pronounced, on the principle that to refuse it would be tantamount to condoning and approving unjust enrichment of the respondents to the extent that they had had the use and benefit of moneys to which the appellants were justly entitled. This decision would have been based on good authority, subsequently brought to our attention by learned counsel, in *Rodger* v. *The Comptoir d'Escompte de Paris.*[3] As Lord Cairns said:—

"It is contended, on the part of the respondents here, that the principal sum being restored to the present petitioners, they have no right to recover from them any interest. It is obvious that, if that is so, injury, and very grave injury, will be done to the petitioners. They will by reason of an act of the court have paid a sum which it is now ascertained was ordered to be paid by mistake and wrongfully. They will recover that sum after the lapse of a considerable time, but they will recover it without the ordinary fruits which are derived from the enjoyment of money. On the other hand, those fruits will have been enjoyed, or may have been enjoyed, by the person who by mistake and by wrong obtained possession of the money under a judgment which has been reversed. So far, therefore, as principle is concerned, their Lordships have no doubt or hesitation in saying that injustice will be done to the petitioners, and that the perfect judicial determination which it must be the object of all courts to arrive at, will not have been arrived at unless the persons who have had their money improperly taken from them have the money restored to them, with interest, during the time that the money has been withheld."

We had accordingly made the order as prayed and now give this written judgment since the point does not appear to have been canvassed in any reported Malayan case of which we are aware.

Application granted.

Solicitors: *Skrine & Co.; Donaldson & Burkinshaw.*